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January 2, 2002

Joseph P. Koncelik
Assistant Director
Ohio EPA
122 South Front Street
Columbus, Ohio 43215

Re: Columbus Metropolitan Facilities Plan Update

Dear Joe:

The purpose of this letter is to explain why Ohio EPA should certify the November 2000 Columbus Metropolitan Facilities Planning Update ("the Metropolitan Plan") as part of the Scioto Basin Areawide Plan. Columbus, at the direction of the Ohio EPA and as the Clean Water Act Designated Management Agency (DMA) for this region, engaged in a planning process in which the people actually responsible for implementing wastewater treatment services and those who will be served by them collaboratively designed a practical, prescriptive, implementable, and environmentally protective plan for wastewater treatment in the region. This is a proper role and responsibility for a DMA. It is also a historically consistent role for a DMA. Certification of the Metropolitan Plan is: consistent with the Clean Water Act; consistent with historical precedent; environmentally sound; practical; widely supported within the region; and good public policy.

Background

When Congress amended the Clean Water Act in 1972, it incorporated a requirement for comprehensive planning in sections 208 and 201 of the Act. Congress envisioned that the "208 Plan" (also known as an "Areawide Plan") would provide a "road map" to achieve the overall goal of water quality protection -- "fishable and swimmable" waters throughout the Nation. An Areawide Plan must address many items, including stormwater, open space, and recreation opportunities. One of the primary items that must be included in an Areawide Plan is the identification of the wastewater treatment needs for the area for a 20-year period and an assessment of how those treatment needs will be met.

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In Central Ohio, Ohio EPA is the agency responsible for performing 208 Areawide planning. Pursuant to a consent order entered in *Reynoldsburg v. Browner*, Ohio EPA is required to update the Areawide Plan for the Blacklick Creek Basin by December 29, 2001; pursuant to the Clean Water Act, Ohio EPA is required to update the plan for the entire Scioto River Basin annually.

The Metropolitan submitted to Ohio EPA in November 2000 was never intended to be the entire 208 Areawide Plan for the Scioto River Basin. It was, however, intended and designed to be the *wastewater treatment component* of the 208 Areawide Plan for that portion of the Scioto River Basin that is inside of the Columbus Facilities Planning Area, including all of the Blacklick Creek Watershed.

For all of the reasons described below, Ohio EPA, as the Areawide Planner, should confirm a DMA-led process for identifying the wastewater treatment needs for the area for a 20-year period and assessing how those treatment needs will be met. The Metropolitan Plan should be approved by Ohio EPA and certified by the Governor as the part of the Scioto Basin Areawide Plan.

1 The Metropolitan Plan Is Consistent With Prior Areawide Planning in Central Ohio.

As noted above, one of the essential elements of an areawide plan is establishing how wastewater treatment needs are going to be met in an area. Areawide plans are supposed to be action plans. Typically, the entity writing the areawide plan (whether it be Ohio EPA or a local planning agency such as Northeast Ohio Area Coordinating Agency) does not itself provide any wastewater treatment services. Instead, areawide plans depend heavily on designated management agencies to provide wastewater services. As Ohio EPA stated in the 1979 Initial Water Quality Management Plan for the Scioto River Basin ("1979 Areawide Plan"):

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The key element of the Water Quality Management planning program is the requirement that Water Quality Management Plans be implemented. Not only must the Water Quality Management Plan for an area identify the water quality problems and propose recommendations for their abatement, but it must also identify those governmental agencies at the State and local level responsible for implementation.

1979 Areawide Plan, Part III, p. III-3.

With regards to Central Ohio, the 1979 Areawide Plan recognizes that because Columbus already had municipal agreements with many suburbs and the County, and expected to enter into more agreements, "the number of management agencies needed in Franklin County should be minimal." 1979 Areawide Plan, Part III, III-28.

The 1979 Areawide Plan also recognized that the major water quality problem in the Columbus Metropolitan Area resulted from development. The plan found that then-existing conditions were causing the pollution of the Scioto as far south as fifty miles downstream. 1979 Areawide Plan, Part II, p. 245. The plan provided a four-part abatement plan to address the water quality issue; this entire abatement plan was dependent on the Columbus system. Specifically, the plan states:

First, sewage treatment facilities presently serving surrounding small communities and developments are to be abandoned where feasible, and the wastewater diverted to the city system. Secondly, the city has "industrial pretreatment requirements" which require treatment of antagonistic wastes" prior to discharge into the city system. Thirdly, new and expanded advanced wastewater treatment facilities are required for the city. Lastly, cooling towers or other forms of heat exchangers may be necessary to reduce the thermal discharge load. Completion of these steps should result in a significant improvement in water quality downstream.

1979 Areawide Plan, Part II, p. 245. In other words, in 1979, Ohio EPA determined that major water quality problems were occurring in Central Ohio, and that the appropriate method to correct the problems was through the actions of Columbus.

Although it identified a problem and a solution, Ohio EPA's 1979 plan did not include a detailed methodology for achieving its goal. Rather, the plan recognizes that the detail planning must be performed by the entity that is going to carry out the solution. This detailed planning is found in the facilities planning to be performed by the DMA.

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As the 1979 Plan noted, facilities planning "can be viewed as a detailed extension of the water quality management plan." 1979 Plan, Part I, p. 8. See also Ohio EPA's 1993 Water Quality Management Plan Certification, p. C-30 (facilities planning is a more detailed version of water quality management plans.)

Columbus has more than fulfilled its obligations as a DMA under the 1979 Plan; in fact, by 1979, Columbus had already begun its efforts. Wastewater planning for the Columbus area began with the submittal of the original Columbus Metropolitan Facilities Plan in 1976. U.S. EPA prepared an Environmental Impact Statement (EIS) on that plan which was completed in 1979. The EIS contained recommendations that differed from the original Facilities Plan. Resolution of these differences continued through 1984, when the City submitted a Plan of Study, which set the groundwork for the first facilities plan update. The first Columbus Metropolitan Area Facilities Plan Update was submitted to Ohio EPA in December 1984, and a Revised Facilities Plan Update supplemented that document in September 1985.

During review of the Revised Facility Plan Update, a number of potentially significant environmental impacts were identified. These included: impacts expected from the fulfillment of the population projections and development for the planning area and the induced growth and secondary environmental effects of expanded treatment capacity. After review of the EIS for the Revised Columbus Metropolitan Area Facilities Plan Update, the U.S. EPA concluded that the cost-effective, environmentally sound alternative for meeting the wastewater treatment needs in the Columbus Facilities Planning Area was the upgrade and operation of the City of Columbus' two wastewater treatment plants, Jackson Pike and Southerly. The U.S. EPA also concluded that upgrading the existing wastewater facilities as proposed in the facilities plan update would accommodate the sustained projected growth in the Columbus Metropolitan Area. U.S. EPA's conclusions were consistent with the 1979 Areawide Plan, which also found that regionalization of wastewater treatment in central Ohio was the key to resolving water quality issues.

The City of Columbus has been implementing this plan for more than fifteen years. During this time, it has performed numerous other facilities planning efforts as it upgraded and expanded its system. See Columbus' November 2000 Facilities Plan Update, Response to Comments, pp. 47-49 for a list of Columbus' Facilities Planning documents submitted from 1974 to the present.

In addition to expanding its system through contracts with suburban communities, Columbus has also been implementing the 1979 Areawide Plan by eliminating other "pockets of pollution" in central Ohio. When Franklin County found, in 1988, that it could no longer operate its numerous, scattered package plants serving unincorporated

areas throughout the County, the City of Columbus expanded the County contract areas and agreed to treat the wastewater from those areas without requiring annexation. The Metropolitan Plan includes a ban on new package plants or alternative systems in part to avoid having these pockets of pollution reoccur. Additionally, there exist numerous instances in which older developments in the unincorporated areas of the County were built using on-site sewage systems such as septic tanks, aerators and leach fields. Many of these systems have failed or are failing, contributing to water quality problems. The City of Columbus has offered to treat wastewater collected and conveyed from these areas by the Franklin County Sewer District without requiring annexation so that this sewer district can provide centralized sewers to replace failing systems.

The City of Columbus' two wastewater treatment plants, Jackson Pike and Southerly, have won awards annually for their superior records of environmentally protective operation. As a result, the water quality for Scioto River below the outfall for the plants has dramatically improved since 1979. Today, rather than suffering from 50 miles of pollution, the river immediately below Columbus is so improved that the Ohio EPA has been considering whether it should be re-designated an exceptional warmwater habitat, the highest water quality rating in Ohio.

2. The Metropolitan Plan Should Be Certified As A Supplement to the Scioto Basin Areawide Plan.

The Metropolitan Plan is a natural extension and codification of the past 20 years of wastewater planning in central Ohio. As noted above, Ohio EPA has long noted that the answer to water quality issues in central Ohio is to move away from small package plants and to expand the regional system operated by Columbus. Despite this preference, in 1988, Ohio EPA approved permits to install two new package plants inside Columbus' facility planning area. These permits led to the *Columbus and Franklin County Metroparks v. Shank* litigation.

In that litigation, both the Environmental Review Appeals Commission (ERAC) and the Ohio Supreme Court recognized the environmental superiority of Columbus' system. See *Metroparks* ERAC decision (1990 Ohio Env. Lexis 5), Finding of Fact 51. The Ohio Supreme Court discussed the superiority of Columbus' system at length:

The social and environmental consequences of ignoring the crucial role of centralized wastewater treatment in the development of the Columbus metropolitan area cannot be overstated. In particular, the remarkable improvement in the Scioto River south of the Columbus Southerly and Jackson Pike facilities ... is as much a function of local as of federal investment. This local share, based as it is on the contributions of the

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numerous ratepayers of the Columbus system, allows Columbus to spread the cost of needed improvements over many customers and to achieve the economies of scale necessary to invest in advanced treatment technologies. The use of package facilities throughout the area currently served by the Columbus system or within its planning area would not only degrade the receiving stream but would undermine the financing of state-of-the-art technology on a regional basis. Accordingly, any consideration of social or economic criteria pursuant to Ohio Adm.Code 3745-1-05 must take account of the objective of the Clean Water Act that rivers and streams are not to be conduits for wastewater. This is particularly the case where a well-constructed network for transmitting domestic sewage is available.

Columbus and Franklin County Metropark District v. Shank (1992), 65 Ohio St.3d 86.

The Ohio Courts have thus interpreted the Clean Water Act to favor centralized sewers and have recognized the superiority of Columbus' system over small package plants. While ERAC and the Court of Appeals found that the 1979 Areawide plan did not expressly prohibit the installation of new package plants (this issue was not before the Ohio Supreme Court), they also recognized that the Areawide plan could include such a prohibition.

In 1999, the City of Columbus, as well as other local jurisdictions, became concerned that the use of alternative wastewater treatment plants inside of the Columbus Metropolitan Facilities Planning Area would undermine the existing centralized system, cause environmental degradation, and promote sprawl. The Ohio EPA advised the City of Columbus to update its Facilities Plan to address this concern. The Ohio EPA also advised that this work product would be used by Ohio EPA to complement and be incorporated into the Areawide Plan that Ohio EPA was required to do for the Blacklick Watershed. Once Ohio EPA incorporated a facilities plan update into the areawide plan, then new package plants would be prohibited.

Based on the advice it received from Ohio EPA, Columbus undertook the lengthy and expensive process of updating its plan. My September 4, 2001 letter to you (copy enclosed) detailed our discussions with Ohio EPA as we proceeded with our planning efforts, and I will not repeat those contacts at length here. There are, however, two points I would like to emphasize.

First, what Columbus was asked to do, and what it did, was to update its prior facilities planning efforts. The Metropolitan Plan was never intended to be a full-blown facilities plan, and as such did not include all the details that would be in a full facilities plan. For instance, Columbus has already performed facilities planning that justifies and supports finding Columbus' two-plant system as the environmentally and fiscally sound

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wastewater treatment alternative for the FPA. The update, therefore, does not discuss the full range of alternatives for wastewater treatment in this area (although the response to comments does discuss alternative wastewater systems at length). The Metropolitan Plan builds on twenty-five years of facilities planning.

Second, after Columbus submitted a draft of its plan to Ohio EPA, Ohio EPA explicitly encouraged Columbus to complete its efforts. On August 1, 2000, almost a month after it received a draft of the Metropolitan Plan, Ohio EPA informed Columbus that its plan looks "promising." Ohio EPA urged Columbus to finalize its plan by going through a stakeholder process. See August 1, 2000 letter from Division of Surface Water Chief Lisa Morris to Cheryl Roberto.

In accordance with Chief Morris' letter and as set out in detail in my September 4 letter to you, Columbus went to great lengths to solicit and address stakeholder input in its Metropolitan Plan. This public outreach was quite successful. It generated numerous comments, and significant modifications to the final plan. The public outreach was also successful in terms of building consensus among many interested stakeholders. Fifteen municipalities representing more than 80% of the population of the FPA endorsed the final plan. Environmental and business groups have expressed support for the plan. We formally submitted this plan to the Ohio EPA in November of 2000.

Typically, Ohio EPA will approve a plan if it is complete and "approvable." Based on the Ohio EPA's guidance and direction, the City's submittal is complete because it includes: a map of existing sewer services within the planning area, 20 year population projections for the planning area, acceptable wastewater options prescribed for the remaining undeveloped areas within the planning area, documentation of public participation and stakeholder involvement, and endorsements from any other DMAs which have overlapping territory within the planning area. All current DMAs in Franklin County (Canal Winchester, Westerville, and Groveport) have endorsed the Metropolitan Plan. The Metropolitan Plan is complete.

Moreover, the Metropolitan Plan is "approvable," as long as it is technically feasible and protective of water quality. With regard to its protection of water quality, the plan update builds upon the uncontroverted U.S. EPA decision in 1988 that the cost-effective, environmentally sound alternative for meeting the wastewater treatment needs in the Columbus Facilities Planning Area is the operation of the City of Columbus' two wastewater treatment plants. With regard to technical feasibility, several months after the Metropolitan Plan was submitted, Ohio EPA staff questioned whether the plan update was "implementable" because the City of Columbus does not currently have service agreements for all of the areas designated in the plan update to be served by Columbus (or another central sewer provider.) Ohio municipalities, however, do not need to have service agreements in order to serve persons living outside their municipal corporate limits. The Ohio Constitution specifically provides that a city has the right to acquire,

own and operate public utilities. See Ohio Constitution, Article XVIII, Section 4. In addition, section 6 of Article XVIII allows a city to sell its surplus utilities to "others." This provision allows (but does not require) cities to sell water and sewer services to nonresidents. See e.g. *Fairway Manor, Inc. v. Summit County Board of Commissioners* (1988), 36 Ohio St. 3d 85; *VMJ Company v. City of Lorain* (1957), 105 Ohio App. 166. In making such sales, the city may impose whatever limits it believes appropriate. *City of Stow v. City of Cuyahoga Falls* (1982), 7 Ohio App. 3d 108; *Joslyn v. Akron* (1958), 77 Ohio Laws Ads. 370. A municipality thus has the ability to sell sewer services directly to nonresidents, absent any service contract with another governmental entity. In addition, Ohio Revised Code sections 719.01 and 719.02 support this authority by granting a city the power to condemn property outside its limits for the purpose of providing service to nonresidents. *City of St. Marys v. Dayton Power and Light* (1992), 76 Ohio App. 3d 526.

Under the criteria Columbus was told to follow, and under the traditional criteria Ohio EPA uses to approve plans, the Metropolitan Plan is complete and approvable. Moreover, Columbus' plan is consistent with prior areawide planning for central Ohio, and will provide the updated areawide plan with a necessary component - - i.e., how wastewater treatment needs are going to be met over the next 20 years. Ohio EPA should follow through on the commitment it previously made to Columbus and its supporters, and certify this plan as part of the Scioto Basin Areawide plan.

3. The Metropolitan Plan Is Fiscally Responsible

In addition to being environmentally sound, the Metropolitan Plan is also fiscally responsible planning because it encourages the full use of existing investments. The current investment in wastewater facilities in Central Ohio is enormous - - the replacement cost for the Columbus Metropolitan system alone has been estimated to approach two billion dollars. This does not include the investment in wastewater facilities by the other providers of centralized sewers in the FPA. The Metropolitan Plan protects this massive investment of public resources by requiring that newly developed areas utilize one of the existing providers. Allowing new package plants in the FPA may strand some of these investment costs.

4. The Metropolitan Plan Appropriately Plans For The Entire Facility Planning Area, Not Just Columbus' Service Area.

The Metropolitan Plan addresses how wastewater treatment needs should be addressed throughout the "Facilities Planning Area." Columbus' current and proposed FPA includes territory that is not within the corporate boundaries of either Columbus or another municipality. It is entirely appropriate for Columbus to nonetheless be performing wastewater treatment planning for these areas.

The distinction between a FPA and a service area was discussed in U.S. EPA's Final Supplemental EIS (1988):

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The FPA represents the geographic area that could be served by the Columbus sewer system. The FPA is defined by OEPA. OEPA assigns each sewer district an FPA in order to coordinate the planning activities of various sewer authorities. The FPA includes the potential service area. The service area must be located within the FPA boundary. The service area boundary . . . represents the area presently served as well as those areas most likely to be served during the 20-year planning area or prior to 2008.

Final SEIS, p. 4-8. I am attaching a copy of the map included with the Final SEIS.

In other words, by definition, a FPA is the area for which a DMA is expected to plan. Assigning a specific FPA to each DMA prevents or minimizes building more facilities than are necessary to serve an area. Because a FPA represents a long term planning area, it typically extends beyond the political jurisdiction of the DMA. This is true in central Ohio as well as in other parts of Ohio. See e.g. NOACA's November 2000 Areawide Plan, Chapter 4.

Ohio EPA long ago assigned to Columbus a FPA that includes most of Franklin county, as well as small portions of surrounding counties. See attached map. Moreover, Columbus has long been performing facilities planning for this entire FPA. In fact, the Final SEIS was U.S. EPA's confirmation of Columbus' planning for this area. In the Record of Decision, U.S. EPA plainly states that:

The cost-effective, environmentally sound alternative for meeting the wastewater treatment needs in the Columbus Facilities Planning Area is the two-plant alternative (i.e., upgrading both existing treatment plants).

Final SEIS, Record of Decision (September 27, 1988), p. 1 (emphasis added). The Final SEIS is not limited to the service area - - it is applicable to the entire FPA.

Ohio EPA, as recently as August 1, 2000, also confirmed that Columbus was to perform planning for the entire FPA, not just its service area. Chief Morris' August 1 letter states:

-) The City of Columbus is the DMA within the Columbus Metropolitan Facilities Planning Area (FPA). As the DMA, the City is responsible for identifying how wastewater treatment needs are going to be met in a manner that protects existing and future water quality and is most responsive to the desires of local officials and communities. Ohio EPA fully supports efforts by the City to

produce a Facilities Plan Update that addresses the wastewater needs within the Columbus Metropolitan FPA for the next 20 years.

* * * * *

- 4) If requested by the City, Ohio EPA will also certify the entire Columbus Facility Plan Update within the same time frame [as the BUMP]. Once U.S. EPA approval is obtained, the Columbus Metropolitan Facility Plan Update will serve as the official master plan for providing sewer and wastewater treatment needs within the facility-planning boundary. By law, Ohio EPA must disapprove sewer or wastewater treatment projects that conflict with an approved 208 plan (e.g. the State Water Quality Management Plan).
- 5) Original FPA boundaries – The original Section 208 plan for the Scioto River basin established a specific geographic area for the Columbus Metropolitan Facility Plan. The City has a responsibility to involve other governmental jurisdictions and stakeholders in assessing the sewer and wastewater treatment needs for an area within the established FPA; however, the City, as the appointed DMA, should make final decisions within the FPA.

Chief Morris' August 1, 2001 letter (emphasis added).

Although one of the objectives of assigning a DMA a specified FPA is to avoid conflicts between providers, potential conflicts have developed in central Ohio (as in other areas of the State). Within Columbus' FPA, several other wastewater treatment providers exist. Most of these providers are not DMA's currently. See Ohio EPA's 1993 Water Quality Management Plan Certification, p. D-14 (Columbus, Westerville, Canal Winchester and Groveport are the only entities in Franklin County that are listed as DMAs'). There is no conflict between approved DMAs, as Westerville, Canal Winchester and Groveport have endorsed Columbus' plan.

There are, however, other service providers that are not now DMA's who might represent potential conflicts. There is no need for Ohio EPA, as the areawide planner, to resolve these conflicts, however, as Columbus has already done so in its facilities plan update. Columbus' plan recognizes seven providers of wastewater treatment, and indicates the potential service area for each. See Columbus Facilities Plan Update, "Alternative Sewer Providers" map.

5. Ohio EPA's Draft BUMP Is Inconsistent With Historical Planning Efforts, the Clean Water Act and Good Public Policy.

As discussed above, the plan submitted by Columbus is a natural extension of the last twenty-plus years of successful water quality planning in Central Ohio. The Metropolitan Plan enjoys wide support in the FPA, is environmentally protective, and is fully implementable. If Ohio EPA certifies the Metropolitan Plan as part of the Scioto basin areawide plan, as it previously indicated that it would do, that section of the Scioto basin areawide plan will comport with the Clean Water Act's requirement that an areawide plan address wastewater treatment needs.

Ohio EPA's draft BUMP, on the other hand, accomplishes none of these things. Instead, the draft BUMP seems to be turning the clock back to the 1970's. Although in 1979, Ohio EPA recognized that Franklin County would require few DMA's because of the regional system operated by Columbus, the draft BUMP suddenly creates thirteen DMAs for the Blacklick Creek area alone. Moreover, the draft plan does not contain the elements required under the Consent Order, or by the Clean Water Act.

Section 208 requires an areawide plan to include:

- an identification of treatment works necessary to meet the anticipated needs of an area;
- the identification of the measures necessary to carry out the plan, the timing of the plan, the cost of the plan, and the economic, social and environmental impacts of the plan; and
- an identification of construction-related sources of pollution and the methods to control such sources.

These elements, and the rest of Section 208, confirm that an areawide plan is supposed to be an action plan; it is supposed to provide a roadmap to how certain items (including treating wastewater) are going to be met.

The Ohio EPA's draft plan is not a prescriptive plan that establishes how wastewater treatment needs are going to be met. Instead, it is a "plan to plan." It makes every political jurisdiction a DMA, even if the entity has no wastewater facilities. It further provides that any newly created DMA may propose anything with regard to how wastewater treatment needs are going to be met, and may plan for any area it chooses.

The Metropolitan Plan submitted by Columbus contains actual prescriptions and a definite plan for how wastewater treatment needs are going to be met. The Metropolitan Plan correctly notes that the entire area within the FPA may be served by one of the existing wastewater treatment providers in the area, and therefore requires any newly developing areas that desire centralized sewers to connect to an existing plant. This is

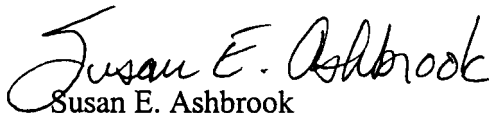
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consistent with section 208 - - and it is also consistent with the goals of the Clean Water Act to promote regionalized sewers over numerous package plants, and to promote water quality.

In contrast with the Metropolitan plan, Ohio EPA's draft BUMP is not a specific plan. Ohio EPA's plan simply extends the planning period and shifts the burden of planning onto the shoulders of the newly designated DMA's. This is neither good planning nor consistent with the Clean Water Act.

This letter does not contain all of the City's comments on the draft BUMP. We will be preparing a more detailed comment letter during the public comment period. I look forward to discussing these issues with you in greater detail.

Sincerely,


Susan E. Ashbrook
Assistant City Attorney





 SERVICE AREA BOUNDARY
 PLANNING AREA BOUNDARY

FIGURE 4-1
PLANNING AND SERVICE
AREA BOUNDARIES

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September 4, 2001

Joseph P. Koncelik, Assistant Director
Ohio Environmental Protection Agency
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

Re: *Columbus Metropolitan Facilities Plan Update*

Dear Joe:

As we discussed, I am sending you this letter to set forth the background, which led to submittal of the Columbus Metropolitan Facility Plan Update (Nov. 3, 2000).

The Columbus Metropolitan Facility Plan Update addresses the wastewater needs of the area within the Columbus Metropolitan Facility Planning Area (FPA) through 2020. The FPA was first established in 1975, when Ohio EPA first delineated an FPA for Columbus. U.S. EPA approved the FPA that same year. In 1988, the U.S. EPA issued a Record of Decision confirming the FPA boundary and finding that the cost-effective environmentally sound alternative for wastewater treatment within the FPA was collection and treatment of wastewater at Columbus' Southerly and Jackson Pike plants. Since that time, the City of Columbus has implemented the approved facilities plan, investing in wastewater collection and treatment infrastructure that is now valued in excess of \$1.5 billion dollars. Although the City's 2000 Update proposes modest modifications to the FPA, the majority of the plan addresses the FPA that has been assigned to Columbus since 1975.

While Columbus is the approved designated management agency (DMA) for the FPA, there are several other DMA's in Franklin County. According to Ohio EPA's last update to the State Water Quality Management Plan (1993), Canal Winchester, Westerville and Groveport are also approved DMA's. Canal Winchester, Westerville and Groveport have both endorsed Columbus' Facility Plan Update. There are no other approved DMA's in Franklin County.

On April 29, 1999, representatives from Columbus, Madison County, Union County, Franklin County and MORPC met with Director Jones and you. The purpose of the meeting was to request that alternative wastewater systems be banned in Columbus' FPA, and to place a

statewide moratorium on such systems until such time as Ohio EPA enacted rules governing the systems.

On June 15, 1999, the City of Columbus, Director Jones and you met to follow up the April meeting. At this meeting, Director Jones agreed to discuss with his staff whether the 208 plan for Central Ohio should be interpreted or clarified to provide for centralized sewers exclusively within the FPA.

On September 3, 1999, Cheryl Roberto met with Division of Surface Water Chief Lisa Morris to further discuss this same issue. Ms. Morris conveyed to Ms. Roberto that the existing 208 plan was out of date and she would not support interpreting it to provide exclusively for centralized sewers within the FPA. She advised that Columbus must update its 201 Facilities Plan, if it wanted the Ohio EPA to ban alternative systems within the FPA.

Following this meeting with Ms. Morris, the City committed considerable resources to the lengthy process of updating its plan. The City began by seeking guidance from Ohio EPA with regard to what its Facility Plan Update should include. The Ohio EPA Central District Office staff directed Columbus to seek guidance from the Ohio EPA Northeast District Office. In particular, Ms. Roberto had numerous contacts with Keith Riley of NEDO who provided very specific criteria and direction for a successful facilities plan update. Mr. Riley also directed Columbus to the draft Akron Facilities Plan Update as an example of a community that had determined that alternative wastewater systems were not an acceptable option within its designated facilities planning area.

On May 15, 2000, Ohio EPA held a BUMP stakeholder meeting. At the meeting, Ohio EPA Central District Office staff indicated that Ohio EPA was planning to use a "facilitated process" to determine a wastewater treatment plan for the Blacklick Watershed. Because all of the Blacklick Watershed is inside of the Columbus FPA, Columbus asked how its Facility Plan Update would relate to the BUMP. No clear response was given. Ms. Roberto raised the same issue in a phone conversation with CDO on June 20, but was unable to determine what the relationship would be.

On July 6, 2000, CDO staff provided to Columbus a draft 208 plan for Northeast Ohio to provide guidance for Columbus Facility Plan and the BUMP process. The draft 208 plan stated that each DMA would have an FPA, and each DMA would be recognized as the lead agency within its FPA by the 208 Plan and would be charged with the responsibility of identifying plans to solve existing wastewater related problems and to accommodate projected growth over a twenty year time frame.

Columbus released its draft Facility Plan Update in June 2000 when it began stakeholder consultation. Columbus met with Ohio EPA CDO and central office staff on July 20, 2000 to present the draft plan and to resolve the relationship between Columbus' role as a DMA and the portion of the BUMP related to wastewater planning. The City explained what it was doing with regard to citizen/stakeholder involvement and asked Ohio EPA to confirm that it was proceeding correctly. The City also again sought clarification with regard to the relationship between its

Update and Ohio EPA's BUMP. Specifically, we queried why the BUMP process included facilitation and a stakeholder outreach process for wastewater planning, if the City was performing that function as the lead wastewater planning agency, the DMA?

On July 26, 2000, George Elmaraghy telephoned Ms. Roberto. In the conversation, Mr. Elmaraghy confirmed that Ohio EPA intended to use the Columbus Update to update the wastewater component of the 208 plan for the Scioto Basin.

On August 1, 2000, Ms. Morris sent a letter to Ms. Roberto to resolve some of the issues raised in the July 20 meeting. Specifically she defined the BUMP project and the Columbus Metropolitan Facilities Plan Update process to be complementary, not competing processes. This letter includes the following statements:

- 1) The City of Columbus is the DMA within the Columbus Metropolitan Facilities Planning Area (FPA). As the DMA, the City is responsible for identifying how wastewater treatment needs are going to be met in a manner that protects existing and future water quality and is most responsive to the desires of local officials and communities. Ohio EPA fully supports efforts by the City to produce a Facilities Plan Update that addresses the wastewater needs within the Columbus Metropolitan FPA for the next 20 years.

* * * * *

- 4) If requested by the City, Ohio EPA will also certify the entire Columbus Facility Plan Update within the same time frame [as the BUMP]. Once U.S. EPA approval is obtained, the Columbus Metropolitan Facility Plan Update will serve as the official master plan for providing sewer and wastewater treatment needs within the facility-planning boundary. By law, Ohio EPA must disapprove sewer or wastewater treatment projects that conflict with an approved 208 plan (e.g. the State Water Quality Management Plan).
- 5) Original FPA boundaries – The original Section 208 plan for the Scioto River basin established a specific geographic area for the Columbus Metropolitan Facility Plan. The City has a responsibility to involve other governmental jurisdictions and stakeholders in assessing the sewer and wastewater treatment needs for an area within the established FPA; however, the City, as the appointed DMA, should make final decisions within the FPA.

I am attaching a complete copy of Ms. Morris' letter for your reference.

In August 2000, questions were raised regarding the stakeholder process, and Ohio EPA's role in the review of the Facility Plan Update. Ms. Roberto and Mr. Elmaraghy

exchanged voice and emails. Mr. Elmaraghy raised the issue of whether Ohio EPA needed to "clarify" Ms. Morris' letter to describe the Ohio EPA review process. Columbus took the position that Ms. Morris' August 1, 2000 letter needed no clarification. Columbus' responsibility was to go through the stakeholder process, and consider and respond to all comments from stakeholders. Ohio EPA's role was to approve Columbus' plan if it was complete (i.e., included all identified elements) and approvable (i.e., technically feasible and protective of water quality). Ohio EPA was not to decide which stakeholder was "right." Columbus, as the DMA, should be the stakeholder arbiter. Ohio EPA did not express disagreement with this position, nor did it issue any letter to clarify Ms. Morris' earlier letter.

On November 9, 2000, Columbus submitted its final Facility Plan Update. Before finalizing the plan, Columbus contacted over 70 stakeholders, held more than 30 stakeholder meetings, distributed 200 cd-rom presentations, provided each public library in Franklin County with the draft plan, created a website for the plan with email comment capability, and televised a 90 minute presentation eight different times. This public outreach generated over 50 comment letters and emails. Columbus included with its plan a written response to these comments. The final Columbus Metropolitan Facilities Plan Update significantly modified the draft plan as a result of stakeholder comments. The final plan was endorsed by fifteen municipalities representing more than 80% of the population of the FPA as well as environmental and business groups.

Columbus briefed Ohio EPA on its plan on November 20, 2000. Additional meetings were held on January 25, 2001, April 4, 2001 and April 6, 2001

On April 13, 2001, Columbus heard from Fairfield County that Ohio EPA was not going to approve Columbus' plan, that the Ohio EPA was not going to ban alternative systems, and that Columbus' plan was not going to be certified as part of the State Water Quality Management Plan (the 208 plan). Ms. Roberto immediately began to try to reach Dan Dudley for confirmation. After several voice mail exchanges, Mr. Dudley confirmed that Ohio EPA had prepared a draft BUMP that did not adopt Columbus' plan. He told Ms. Roberto that Ohio EPA did not find Columbus' plan implementable, that Ohio EPA did not think it could ban alternative plants, and that Franklin County opposed Ohio EPA's plan. Ms. Roberto asked for a meeting before the draft BUMP was issued.

On May 10, 2001, Columbus and Ohio EPA met. Ohio EPA explained that it did not believe it could or should ban alternative systems within any part of the Columbus' FPA including the BUMP area because alternative systems were legal options and all stakeholders did not agree that they should be banned. Columbus suggested that if Akron could exclude, with Ohio EPA's support, alternative wastewater systems by requiring central systems, then Ohio EPA could do so in Central Ohio as well. Columbus stated that we would be willing to work with the Ohio EPA to drop the affirmative ban language, as long as the plans required utilizing centralized wastewater service. Also, despite the fact that Jefferson Township Water and Sewer District is not an approved DMA, Columbus offered to work with Ohio EPA and Jefferson Township to find an acceptable solution for wastewater planning within Jefferson Township.

Ohio EPA indicated that it needed to have further internal discussions, and that nothing would be released in the mean time.


Ms. Roberto had follow-up conversations with Mr. Elmaraghy (May 11) and Ms. Morris (July 5 and 9). Ms. Morris indicated that Ohio EPA had now come to the position that it would not ban alternative systems, but it still intended to defer to a DMA's election of treatment options. If a DMA decided not to use alternative systems, Ohio EPA would support that election. The Ohio EPA would support the Columbus Metropolitan Facilities Plan Update in all areas within the FPA, except for Jefferson Township, as long as the affirmative ban on alternative systems was removed. From July 9 until August 16, 2001 when Columbus received the draft appendix, Columbus received no indication that Ohio EPA had changed this position.

I hope this history illustrates why Columbus found the contents of the draft appendix so shocking. The language in the appendix that describes Ohio EPA's position on the issue of the role of a DMA, the meaning of an FPA, and alternative systems expressly contradicts the numerous written and oral statements made to Columbus by Ohio EPA over the past two years. Columbus has spent much time and many resources in reliance on Ohio EPA's stated position, and was therefore understandably dismayed at Ohio EPA's reversal of position.

Columbus and the other Central Ohio municipalities look forward to meeting with you and Director Jones on September 21 to discuss how the wastewater needs of central Ohio over the next twenty years may best be met.

If you have any questions regarding this letter, please let me know. I would also be happy to provide you with documentation of some or all of the contacts described above, if you believe it would be of any value to you.

Sincerely,


Susan E. Ashbrook
Assistant City Attorney

SEA: rm

cc: Steve Campbell, Deputy Chief of Staff for Policy, Mayor's Office
John Douth, Director, Public Utilities
✓ Cheryl Robert, Deputy Director, Public Utilities
Dan Drake, Chief Counsel, City Attorney's Office



State of Ohio Environmental Protection Agency

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August 1, 2000

Cheryl Roberto, Policy Advisor
Office of the Mayor
City of Columbus
90 West Broad Street
Columbus, Ohio 43215

Dear Ms. Roberto:

I am writing to clarify issues surrounding our mutual interests in updating sewer and wastewater facility plans for the Columbus metropolitan area. Our meeting on July 20, 2000 was productive but lacked a sense of closure. I hope this letter will make our position clear so that you may move ahead with the full cooperation of Ohio EPA and other Columbus area communities and stakeholders.

Under the federal Clean Water Act, state and local officials are required to complete long-term planning to address water pollution. Since many local governments, including the City of Columbus, conducted extensive planning in the 1970's and 1980's there is now a growing need to update these plans to reflect the current situation and the vision for future community growth and sewer service need. Over the past 2 years, Ohio EPA has been urging all governmental entities with sewer and wastewater treatment responsibilities (a Designated Management Agency [DMA]) to update their Facility Plans.

As we discussed in our meeting, we need to move forward with the City's efforts to complete a Facility Plan Update and Ohio EPA's more localized Blacklick Creek Water Quality Management Plan update. The Agency is responsible under a Court Consent Decree to produce the Blacklick Creek update. It is in both our interests to manage these projects as complementary efforts, not competing or duplicative efforts. I think this is entirely possible if we abide by the following principles.

- 1 The City of Columbus is the DMA within the Columbus Metropolitan Facilities Planning Area (FPA). As the DMA, the City is responsible for identifying how wastewater treatment needs are going to be met in a manner that protects existing and future water quality and is most responsive to the desires of local officials and communities. Ohio EPA fully supports efforts by the City to produce a Facilities Plan Update that addresses the wastewater needs within the Columbus Metropolitan FPA for the next 20 years.

Bob Taft, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director



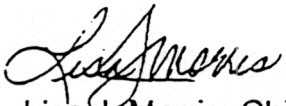
- 2 The City will review its draft Facility Plan Update with all affected jurisdictions and stakeholders. These other participants are a vital component in reaching a final plan that achieves what is best for public health, the environment and overall sound planning for regional growth.
- 3 Ohio EPA will follow through on its obligation to update the Blacklick Creek Section 208 Areawide Waste Treatment Management Plan using input from the City of Columbus and other stakeholders. The Agency will certify these updates by amending the State's Water Quality Management Plan no later than December 31, 2001.
4. If requested by the City, Ohio EPA will also certify the entire Columbus Facility Plan Update within the same time frame. Once U.S. EPA approval is obtained, the Columbus Metropolitan Facility Plan Update will serve as the official master plan for providing sewer and wastewater treatment needs within the facility planning boundary. By law, Ohio EPA must disapprove sewer or wastewater treatment projects that conflict with an approved 208 plan (e.g., the State Water Quality Management Plan).
5. Original FPA boundaries - The original Section 208 plan for the Scioto River basin established a specific geographic area for the Columbus Metropolitan Facility Plan. The City has a responsibility to involve other governmental jurisdictions and stakeholders in assessing the sewer and wastewater treatment needs for an area within the established FPA; however, the City, as the appointed DMA, should make final decisions within the established FPA.
- 6 Altered FPA boundaries - Ohio EPA encourages the City to explore logical and cost-effective adjustments in the FPA boundaries. Naturally, the City should seek stakeholder involvement and support in this process. A respect for natural watershed boundaries and a policy shift of providing service without the requirement of annexation appear to offer win/win opportunities in many communities. If all affected jurisdictions and stakeholders support changes in the FPA boundaries, I would expect Ohio EPA to concur with such changes. If consensus is not reached, the Agency will need to assess the matter and determine if a change in the FPA boundary is appropriate.

Cheryl Roberto, Policy Advisor
August 1, 2000
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In conclusion, Ohio EPA supports the work of all Designated Management Agencies in their efforts to update sewer and wastewater treatment planning. The draft work product for the Columbus Metropolitan area you shared with us looked promising. I urge the City and other affected local jurisdictions and stakeholders to continue the planning process and to consider the needs for assuring public health and stream ecosystem health as top priorities.

Finally, I will have my staff prepare and transmit under separate cover some additional information regarding our update of the Blacklick Creek Section 208 Areawide Waste Treatment Management Plan.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa J. Morris".

Lisa J. Morris, Chief
Division of Surface Water

LJM:dd

out\roberto_dd.wpd